

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

Kasenia R., by and through
her parents and next best
friend, M.R. and C. B.

v.


Case No. 05-cv-292-SM

Brookline School District

ORDER

Re: Document No. 56, Objection to Magistrate Judge's
Decision (Rule 72(a)) re: denying additional evidence.

Ruling: Other: Having reviewed the pleadings and the Magistrate Judge's Order, the order is affirmed as neither clearly erroneous nor contrary to law. I would add that the record discloses that plaintiff's counsel was afforded more than adequate time and opportunity to present plaintiff's administrative case, and chose to allocate that time as she thought appropriate. Plaintiffs cannot now complain about those strategic choices. Indeed, the hearing officer expressed understandable frustration with counsel's seeming lack of organization and focus in presenting the case. With respect to Dr. Afshar, it is apparent that he was present and could have been called at the hearing, though it also seemed to have been established that his specific (as opposed to generic) recommendations had not previously been made available to the IEP team. In any event, counsel made a proffer as to what Dr. Afshar's testimony would have been in substance, which is part of the record and adequate for review in this court. Administrative due process hearings in this context are not meant to be marathons limited only by counsel's desire to continue to jog; the hearing officer can and should require parties and counsel to focus on the relevant issues, and to get to the point, presenting witnesses and evidence effectively and in a focused manner, and counsel and parties ought to be able to do so. Here, counsel had a full opportunity to, and easily could have, called all the relevant witnesses she desired, and could have presented all the available evidence she thought useful. No "solid justification" has been shown warranting additional evidence in this forum on appeal.


Steven J. McAuliffe
Chief District Judge

Date: December 26, 2006

cc: Theresa Kraft, Esq.
Dean B. Eggert, Esq.